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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

MAY 30 2001

In re application of: Tessier-Lavigne et al.

Group Art Unit: 1631

TECH CENTER 1600/2000
FAX RECEIVED

Serial No. 09/273,098

MAY 25 2001

Filed: March 19, 1999

Attorney Docket No. UC99-244-2

PETITIONS OFFICE

For: *Compositions for Promoting Nerve
Regeneration*

CERTIFICATE OF TRANSMISSION

I hereby certify that this corr. is being transmitted by fax to the Comm
for Patents at (703) 308-6916 on May 25, 2001Signed Rebecca Graff
Rebecca Graff#15
Plunkett

7/27/01

PETITION TO CHARGE DEPOSIT ACCOUNT OR, IN THE ALTERNATIVE, REVIVE
APPLICATIONCommissioner for Patents
Washington, D.C. 20231

Dear Commissioner:

I was notified by Robert Hill of your Office today that our Request to Charge Deposit Account mailed Feb 5, 2001 was denied and that if we are not entitled to the Sept 5, 2000 mailing date for our prior Response, our application would be deemed abandoned. We presume Mr. Hill represents the Group director in taking these positions; accordingly, we request that the Commissioner exercise his authority to review and reconsider the Director's imputed position, and in the event the Commissioner maintains these positions, we request revival of the application.

Our prior Response, bearing a certificate of mailing dated Sept 5, 2000 was mailed in compliance with 37CFR1.8(a)(i). In particular, the person signing the certificate of mailing (I, the undersigned) had a reasonable basis to expect that the correspondence would be mailed on the date indicated. A subsequent investigation by me indicated that the correspondence was deposited on Sept 6, 2000. Our Request properly used the word "probably" because the Sept 6 mail date was not based on my first-hand witnessing of the event, but logically deduced from interviews and reviews of phone and mailing records that occurred five months later. In other words, with hindsight, I have a reasonable basis to believe that the Response was in fact mailed on Sept 6, 2000.

Under these facts, we believe the prior Response is properly afforded a Sept 6, 2000 mailing date; or in any event, the actual date of receipt by the Office (Sept 12, 2000, according to

our postcard receipt). In either case, I included with our prior Response a petition for *any necessary extension* of time pursuant to 37 CFR 1.136(a) and authorized the Commissioner to charge any fees to our Deposit Account No. 19-0750. At the time the Response was received by the Office, neither I nor the Office had any reason to believe that more than one month extension was necessary, and according to my records, the Office charged a one month extension (small entity) to our deposit account on Sept 25, 2000. It was not until Jan 30, 2001 that I first had any reason to doubt the Sept 5, 2000 mailing date and I promptly notified the Office on Feb 5, 2001 with the referenced Request.

Where an Applicant in good faith suggests a particular extension fee, yet authorizes the Commissioner to charge any necessary extension fee, and the Office relies on the particularly suggested fee, and the Applicant later informs the Office that the suggested fee, while suggested in good faith, was insufficient, the Office retroactively charges the sufficient fee. This is true whether the fee deficiency resulted from an insufficient check, an inaccurate small entity status, or an inaccurate certificate of mailing. Accordingly, we believe the Commissioner should properly charge our deposit account the difference between the one month extension fee charged and the necessary two month extension fee, as requested in our referenced Request.

If the Commissioner elects to hold this application abandoned, we (a) request an explanation of the basis for any such decision and (b) hereby petition to revive this application and authorize the Commissioner to charge our deposit account any necessary fees (small entity). As noted above, I had and maintain a good faith belief that our prior Response properly tolled the reply period. I had no way of knowing that the Office would construe our petition for "any necessary extension" to be limited to an insufficient extension, whereas in all other cases of which I am aware, the Office retroactively construes such a petition to encompass the necessary extension and fee. As all my actions, including the Response and subsequent Request, were properly presented in good faith and to the best of my knowledge at the time, the entire delay in filing the required reply from the due date for the reply until the filing of this petition was unavoidable, and in any event, unintentional.

Respectfully submitted,
SCIENCE & TECHNOLOGY LAW GROUP



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